

member by virtue of an application made by him under this section. A retired member who does not make the additional election provided under this section within the time limits will not be allowed to reduce an annuity or withdraw from participation in the Plan as provided by § 48.406.

(b) Members who have elected and are not yet retired will automatically participate under the provisions of § 48.201.

(c) Elections in effect on August 13, 1968, will remain under the cost tables applicable on the date of the member's retirement.

(d) Any member who has filed an election, modification, or revocation prior to August 13, 1968, may before September 1, 1969, submit a written application to the Secretary concerned requesting that such election, modification, or revocation remain under the time-of-election provisions of the law applicable on the date it was filed.

## PART 51—THE DEPARTMENT OF DEFENSE MILITARY EQUAL OPPORTUNITY PROGRAM

### Sec.

#### 51.1 Purpose.

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### APPENDIX A TO PART 51—MILITARY EQUAL OPPORTUNITY REPORTING REQUIREMENTS

### APPENDIX B TO PART 51—ORGANIZATIONS AND FUNCTIONS

AUTHORITY: Pub. L. 92-261, sec. 301, 80 Stat. 379 (5 U.S.C. 301, 10 U.S.C. 133).

SOURCE: 54 FR 46227, Nov. 2, 1989, unless otherwise noted.

#### § 51.1 Purpose.

This part:

(a) Regulates the Department of Defense Military Equal Opportunity (EO) Program and assigns responsibilities for ensuring DoD-wide compliance with the broad program objectives outlined in DoD Human Goals Charter, March 21, 1988.

(b) Provides for education and training in EO and human relations.

(c) Prescribes the functions of the Defense Equal Opportunity Council

(DEOC), the Defense Equal Opportunity Management Institute (DEOMI), and the Board of Visitors (BOV) to DEOMI.

#### § 51.2 Applicability and scope.

This part:

(a) Applies to all military members of the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

(b) Applies to DoD contracted organizations that provide services to military personnel and their families.

(c) Does not apply to civilian personnel, except as noted in paragraph (b) of this section.

#### § 51.3 Definitions.

*Affirmative Action.* Methods used to achieve the objectives of the EO program. Processes, activities, and systems designed to identify, eliminate, prevent, and work to overcome the effects of discriminatory treatment as it affects the upward mobility and quality of life for DoD personnel.

*Discrimination.* Illegal treatment of a person or group based on handicap, race, color, national origin, age, religion, or gender.

*DoD Military Equal Opportunity (EO) Program.* The DoD-wide military program of equal opportunity that is accomplished through efforts by DoD Components. It provides an environment in which every member of the total force is ensured an opportunity to rise to as high a level of responsibility as possible in the military profession, dependent only on merit, fitness, and capability.

*Equal Opportunity (EO).* The right of all persons to participate in and benefit from programs and activities for which they are qualified. These programs and activities shall be free from social, personal, or institutional barriers that prevent people from rising to as high a level of responsibility as possible. Persons shall be evaluated only on individual merit, fitness, and capability,

regardless of race, color, gender, national origin, age, or handicap except as prescribed by statute, or DoD/Service policy.

*Ethnic Group.* A segment of the population that possesses common characteristics and a cultural heritage based to some degree on the following:

- (a) Common geographic origin;
- (b) Race;
- (c) Language or dialect;
- (d) Religious faith or faiths;
- (e) Shared traditions, values, or symbols;
- (f) Literature, folklore, or music;
- (g) An internal sense of distinctiveness; and/or
- (h) An external perception of distinctiveness.

*Ethnic and Racial Categories.* The basic racial and ethnic categories for DoD reporting are defined as follows:

(a) *American Indian or Alaskan Native.* A person having origins in the original peoples of North America.

(b) *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes China, India, Japan, Korea, the Philippine Islands, and Samoa.

(c) *Black (Not of Hispanic Origin).* A person having origins in any of the original peoples of Africa.

(d) *Hispanic.* A person having origins in any of the original peoples of Mexico, Puerto Rico, Cuba, or Central or South America, or of other Spanish cultures, regardless of race.

(e) *White (Not of Hispanic Origin).* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

*National origin.* An individual's or ancestor's place of origin. Also applies to a person who has the physical, cultural, or linguistic characteristics of a national group.

*Race.* A division of humans identified by the possession of traits that are transmissible by descent and that are sufficient to characterize as a distinctive human type.

*Religion.* A personal set or institutionalized system of attitudes, moral or ethical beliefs, and practices that are held with the strength of traditional religious views, characterized by

ardor and faith, and generally evidenced through specific religious observances.

*Sexual Harassment.* A form of sex discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or

(b) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

(c) Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

#### § 51.4 Policy.

It is DoD policy to:

(a) Support the military EO program as an integral element in total force readiness, as defined in the Secretary of Defense Memorandum and enforce at all levels of activity the EO provisions of this part in developing operating EO policies and programs.

(b) Use the chain of command to promote, support, and enforce the military EO program. The chain of command is the primary and preferred channel for correcting discriminatory practices and for ensuring that human relations and EO matters are enacted.

(c) Ensure the Military Services (to include the Reserve components) maintain military EO and affirmative action programs. Discrimination that adversely affects persons or groups based on race, color, religion, gender, age, or national origin, and that is not supported legally, is contrary to good

order and discipline, and is counter-productive to combat readiness and mission accomplishment. Discrimination of this nature shall not be condoned or tolerated.

(d) Provide education and training in EO and human relations at installation and fleet unit commands, Military Service accession points, and throughout the professional military education (PME) system, as part of the overall effort to achieve equal opportunity.

(e) Provide for an environment that is free from sexual harassment by eliminating this form of discrimination in the Department of Defense.

(f) Ensure that all on-base activities and, to the extent of the ability of DoD, any off-base activities available to military personnel are open to all military personnel and their authorized family members regardless of race, color, religion, age, physical or mental handicap, gender, or national origin, as called for by the DoD Human Goals Charter.

(1) Organizations or activities that do not meet this requirement shall be denied the use of military facilities and resources in accordance with 32 CFR part 237. This policy applies equally to those organizations that may discriminate based on the content of their constitutions, bylaws, rules or regulations, as well as to those which, in the judgment of the responsible commander(s), are engaging in de facto discrimination regardless of the content of their constitutions, bylaws, rules or regulations.

(2) Organizations that use on-base facilities, whether on a reimbursable basis or otherwise, must satisfy the responsible area or activity commander that they do not discriminate through their actual membership practices or in any of their activities.

(g) Oppose discrimination in off-base housing directed against military personnel and their authorized family members. Each commander shall take actions to overcome such discrimination and to impose off-limits sanctions in housing cases, as required by 32 CFR part 301.

(h) Impose, as required, the off-limits sanction according to the Armed Forces Disciplinary Control Board as stated in the Joint Regulation, in cases of discrimination involving places of

public accommodations outside military installations.

#### § 51.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall:

(1) Represent and advise the Secretary of Defense in military EO matters consistent with 32 CFR part 384.

(2) Chair the Defense Equal Opportunity Council.

(3) Provide guidance on developing all DoD programs to ensure equal opportunity for military personnel in the total force.

(4) Develop, execute, and monitor the effectiveness of military EO policies in support of national security objectives.

(5) Ensure that DoD Components fulfill the requirements of this part.

(6) Provide policy direction to DEOMI and select the Commandant of DEOMI from Military Service nominations.

(7) Establish categories and monitor specific goals to be included in the affirmative action programs and annual military EO assessments of each DoD Component.

(8) Review and act on (or refer to appropriate Military Service) all complaints of discrimination arising under this part (to include sexual harassment) referred to the Secretary of Defense.

(9) Ensure fair, impartial and timely investigation, resolution, and follow-up of all complaints of discrimination arising under this part.

(10) Establish a program to recognize individuals and organizations for outstanding achievement in one or more of the major EO areas covered by this part.

(b) The *Heads of DoD Components* shall be responsible for equal opportunity within their respective jurisdictions (to include their Reserve components) and shall:

(1) Ensure that all DoD EO policies and programs are understood and executed at all levels of military command.

(2) Establish affirmative action programs that identify and resolve EO

problems through formulating, maintaining, and reviewing affirmative action plans (AAPs) with established objectives and milestones and including accountability in personnel management consistent with DoD Instruction 1350.3.<sup>1</sup>

(3) Forward a fiscal year report to the ASD(FM&P) outlining the progress being made to achieve the established military EO objectives of the AAP. This report shall be due each year on February 1, and is described further in DoD Instruction 1350.2.

(4) Establish policies that include specific actions to be taken against any individual who commits an act of discrimination, as defined in § 51.3.

(5) Rewrite documents and change practices that discriminate against military personnel based on race, religion, color, gender, or national origin. This requirement does not apply to those Military Service documents that implement statutes or DoD/Service policy requiring different treatment of military personnel based on age or gender.

(6) Establish policies and procedures to prevent sexual harassment and to ensure that appropriate action is taken against individuals who commit sexual harassment offenses, in accordance with the Secretary of Defense Memorandums.

(7) Ensure that all military personnel, including command-selectees and flag and general officers, receive training in equal opportunity, human relations, and prevention of sexual harassment on a recurring basis, and at all levels of PME.

(8) Establish and fill sufficient full-time staff positions and allocate sufficient resources to conduct all EO programs. Equal opportunity staff personnel shall be placed at a level that enables them to communicate effectively the goals and objectives of the program and obtain the understanding, support, and commitment of the organization's leaders.

(9) Ensure that all discrimination complaints are investigated in a fair, impartial, and prompt manner.

(10) Ensure that consideration of EO program support is included in the instructions that guide rating officials in preparing efficiency reports and/or evaluations on their subordinates.

(11) Develop management information and reporting systems to determine the progress for each AAP goal consistent with DoD Instruction 1350.3.

(12) Establish EO awards programs to recognize individuals and organizational units for outstanding achievement in any of the EO areas covered by this part or Military Service-unique programs.

#### § 51.6 Information requirements.

An annual report is required and is assigned Report Control Symbol DD-FM&P(A)1760. Reporting requirements are contained in appendix A to this part and further amplified in DoD Instruction 1350.3.

#### APPENDIX A TO PART 51—MILITARY EQUAL OPPORTUNITY REPORTING REQUIREMENTS

Each DoD Component shall submit an annual Military Equal Opportunity Assessment (MEOA) for the period ending September 30 to the ASD(FM&P) no later than February 1 of the following year. The report shall include the following information:

A. An executive summary, providing an overall assessment of each DoD Component's AAPs and EO Programs.

B. An assessment of each affirmative action in the following 10 categories shall be made an enclosure to the report. The assessment in each category should include quantitative data in the basic race/ethnic classifications for officers and enlisted personnel broken down by gender.

1. Recruiting/Accessions
2. Composition
3. Promotions
4. Professional Military Education (PME)
5. Separations
6. Augmentation/Retention
7. Assignments
8. Discrimination/Sexual Harassment Complaints
9. Utilization of Skills
10. Discipline

C. Requirements are further explained in DoD Instruction 1350.3.

<sup>1</sup>Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

APPENDIX B TO PART 51—  
ORGANIZATIONS AND FUNCTIONS

1. *The Defense Equal Opportunity Council (DEOC) shall:*

- a. Coordinate policy and review the military and civilian EO programs.
- b. Monitor progress of program elements.
- c. Advise the Secretary of Defense on policies for EO matters.
- d. Assist in developing policy guidance for education and training in EO and human relations for DoD personnel.

2. *The DEOC is chaired by the Assistant Secretary of Defense/Force Management and Personnel (ASD(FM&P)).* Other members are the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)); the Assistant Secretary of the Air Force for Manpower and Reserve Affairs (ASAF(M&RA)); the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA(MRA)); the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN(M&RA)); and the Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD).

3. *DEOMI is a DoD Field Activity Operating Under the Supervision, Direction, and Policy Guidance of the ASD(FM&P).* Located as a tenant on an established military installation, DEOMI shall be supported administratively and logistically by the Military Department responsible for the host installation.

a. The mission of DEOMI is to enhance combat and/or operational readiness through improved leadership by functioning as the DoD center of excellence in all facets of military EO and human relations education and training to include the following:

(1) Providing primary training for all DoD military and civilian personnel assigned to military EO billets (to include the U.S. Coast Guard), and staff officers who directly manage EO and human relations programs.

(2) Performing EO and human relations research in conjunction with the Military Services and acting as a clearing house to monitor and disseminate research findings on EO and human relations.

(3) Providing assistance or consultation services in DoD organizations in developing specific curricula and training for EO and human relations education, and particular training for the PME systems within the Military Services; and serving in an advisory capacity to other Agencies in education, industry, and the private sector, as determined by the Commandant.

(4) Disseminating educational training materials to assist EO advisors and human relations instructors in remaining current in the EO subject area and in otherwise developing professionally.

(5) Performing special research-related projects in support of the DEOC.

(6) Operating and administering the Defense EO Electronic Bulletin Board to support EO advisors and specialists throughout the Military Services.

(7) Serving as a focal point and depository for data and research on the EO climate and sexual harassment in the Military Services.

b. The following applies to appointments to DEOMI:

(1) The Commandant shall be appointed by the ASD(FM&P). This position shall rotate among representatives nominated by the Departments of the Army, Navy, and Air Force.

(2) The ASD(FM&P) shall establish criteria for assigning officers and enlisted personnel from the Military Departments, including the Coast Guard, National Guard, and Reserves to faculty and staff positions at DEOMI.

4. The *DEOMI BOV is an Advisory Body to the ASD(FM&P)*. The Board is established by charter and serves as an external source of expertise to ensure periodic review of the objectives, policies, and operations of DEOMI.

## PART 53—WEARING OF THE UNIFORM

Sec.

53.1 Purpose.

53.2 Policy.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 772.

### §53.1 Purpose.

This part prescribes limitations on wearing of the uniform by members of the Armed Forces, and establishes policy with respect to wearing of the uniform by former members of the Armed Forces.

[35 FR 1236, Jan. 30, 1970]

### §53.2 Policy.

(a) *Members of the Armed Forces* (including retired members and members of reserve components). The wearing of the uniform is prohibited under any of the following circumstances:

(1) At any meeting or demonstration which is a function of, or sponsored by an organization, association, movement, group, or combination of persons which the Attorney General of the United States has designated, pursuant to E.O. 10450 as amended, as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under The Constitution of the United States, or as seeking